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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

LIM3

**PETITION** ←

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on MAY 2, 2007Signature Typed or printed name RISTO A. RINNE, JR.

Application Number

10/826,830

Filed

April 16, 2004

First Named Inventor

EDMOND HENG LIM

Art Unit

3632

Examiner

WUJCIAK, ALFRED J.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 37,055

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

RISTO A. RINNE, JR.

Typed or printed name

415.457.6933

Telephone number

MAY 2, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 2 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES DEPARTMENT OF COMMERCE  
BEFORE THE PATENT AND TRADEMARK OFFICE

In re application of: Lim, Edmond Heng )  
Serial No: 10/826,830 ) Group No.:3632  
Filed: 04/16/2004 ) Examiner: Wujciak, Alfred J  
For: Paper Plate Beverage Holder )

Commissioner of Patents and Trademarks

**CERTIFICATE OF MAILING (37 CFR 1.8a)**

I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop PETITION, Commissioner for Patents, Alexandria, VA 22313-1450 on May 2, 2007.

Risto A. Rinne, Jr.  
(Name of person mailing paper)

Date: May 2, 2007

  
(Signature of person mailing paper) Reg. 37,055

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Hon. Commissioner of Patents and Trademarks

Sir:

In response to the Office Action mailed March 8, 2007, please consider the following in appeal of the dismissal decision and the basis thereof:

The petition to review the above-identified application was dismissed because the reply, it is asserted, was not an amendment that prima facie places the application in condition for allowance.

It is respectfully suggested that the corrected reply that was submitted with the petition to revive on July 11<sup>th</sup>, 2006 was not either the reply that was considered in making a determination regarding the petition to revive and that a determination of the

completeness of the reply that was filed with the petition to revive was improperly made because it raised new grounds that the applicant was previously not made aware of and therefore could not have possibly corrected.

This belief is based, in part, on the fact that certain of the reasons cited in the dismissal of the petition to revive are identical to those that were cited in a Notice of Non-Compliant Amendment that was mailed on April 3, 2006 with the exception of the comments appertaining to claim 21. Claim 21 is discussed hereinbelow. However, these defects had been corrected in the reply that was filed on July 11, 2006. The Notice of Non-Compliant Amendment was the Office's response to an "Amendment After Final" that was mailed on 12-23-2006. The defects in the Amendment After Final that was mailed on 12-23-2006 were corrected in the reply (i.e., a "Corrected Amendment After Final") that was submitted on July 11<sup>th</sup>, 2006 along with the petition to revive and therefore cannot possibly be proper basis for the dismissal of the petition to revive.

As relevant background information, a death in the immediate family on April 30, 2006 (a copy of the death certificate for Manuel Petrakis, father of my wife Stella Petrakis-Rinne, is enclosed) and the effects thereof resulted in a delay in the mailing of the response (i.e., the reply) to the Notice of Non-Compliant Amendment.

This delay occurred because I am a solo practitioner and because his death had significant impact on the surviving family. Consequently, the response to the notice of Non-Compliant Amendment was made at the first available opportunity, and was mailed on July 11, 2006. This response included a "Corrected Amendment After Final", a one-page letter of transmittal, a petition for revival of an application for patent abandoned unintentionally, and the required fee of \$750.00.

Specifically, the continuation of 4(e) that was provided with the dismissal states, "Other: Claims 11-12, and 14, "(previously amended)" should be changed to --(previously presented)-- and claim 21, "(re-presented)" should be changed to -(previously presented)-- for clarification." These are believed to have been corrected in the corrected amendment after final that was mailed along with the petition to revive on July 11, 2006. Therefore, this cannot be proper basis for dismissal if they were in fact corrected by the reply that accompanied the petition. At the very least it provides confusion and makes a proper response at this time by the applicant impossible to accomplish.

An additional reason was also cited in the dismissal sent March 8, 2007 regarding claim 21 that asserted that applicant failed to show marked up changes for claim 21 when it changed from a method claim to an apparatus claim using underline, bracket, or

striketthrough. This is believed to also be an incorrect basis for the dismissal. This is because the Office Action that was mailed on April 30, 2006 (i.e., The Notice of Non-Compliant Amendment) failed to make mention that any changes to claim 21 were required or were a basis of non-compliance. Accordingly, the applicant would certainly well-believe that the only required changes necessary to bring the Amendment After Final into condition of allowance were those that were specified in the notice of non-compliant amendment; specifically the changes to the claim identifiers.

Accordingly, the reply that was submitted on July 11, 2006 along with the petition for revival can only rightly be evaluated for compliance based on the content of the notice of non-compliant amendment that was mailed on April 30, 2007. It is improper to add new grounds at this time and then penalize the applicant for not having foresight to somehow anticipate and correct them. The applicant had no notice whatsoever provided by the USPTO to include marked up changes for claim 21 or that such changes to claim 21 were required to bring the Amendment After Final into compliance. This request was not part of the original requirement to bring the amendment after final into compliance. Therefore, it could not possibly be included as part of the reply that was a bona fide effort to correct the defects that were cited in the Notice of Non-Compliant Amendment.

Upon the Examiner's later (subsequent) review and determination that further changes to claim 21 were required to the Amendment After Final, these changes should have been communicated to the applicant by way of a second Notice of Non-Compliant Amendment. In other words, it is respectfully suggested and requested that the petition for revival should have been allowed as proper and that a subsequent office action should be mailed to the applicant regarding the newly found grounds of non-compliance for claim 21. Otherwise, the applicant is being penalized for making a bona fide effort complying with all of the stated requirements of an Office Action (i.e., the notice of non-compliant amendment) and subsequent to his compliance, not being granted a resumption of the normal course of prosecution.

Please grant the petition to revive the application.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Risto A. Rinne, Jr.', with a stylized, cursive script.

Risto A. Rinne, Jr.

Reg. No. 37,055

2173 East Francisco Blvd. Suite E

San Rafael, CA 94901

Telephone 415 457-6933

# STATE OF CALIFORNIA

## CERTIFICATION OF VITAL RECORD

### CITY AND COUNTY OF SAN FRANCISCO

#### CERTIFICATE OF DEATH

3200638002056

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT - FIRST (Given)		3. LAST (Family)	
MANUEL		PETRAKIS	
2. MIDDLE		4. DATE OF BIRTH	
M.		10/18/1913	
5. AGE Yr.		6. SEX	
92		M	
7. BIRTH STATE/FOREIGN COUNTRY		8. SOCIAL SECURITY NUMBER	
Greece		353-18-6408	
9. EVER IN U.S. ARMED FORCES?		10. MARITAL STATUS (at Time of Death)	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		Married	
11. DATE OF DEATH		12. HOUR (24 Hours)	
04/30/2006		0200	
13. OCCIDENTAL RACE - (List in 3 places if related (see worksheet on back))		14. OCCIDENTAL RACE - (List in 3 places if related (see worksheet on back))	
White		White	
15. USUAL OCCUPATION - (Type of work for most of life. DO NOT USE RETIRED)		16. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)	
Entomologist		Public Health	
17. YEARS IN OCCUPATION		18. YEARS IN OCCUPATION	
55		55	
19. DECEDENT'S RESIDENCE (Street and number or location)			
2200 Sacramento Street, #1503			
20. CITY		21. COUNTY/PROVINCE	
San Francisco		San Francisco	
22. ZIP CODE		23. YEARS IN COUNTY	
94115		39	
24. STATE/FOREIGN COUNTRY		25. STATE/FOREIGN COUNTRY	
California		California	
26. INFORMANT'S NAME, RELATIONSHIP			
Carmencita Petrakis - Wife			
27. INFORMANT'S MAILING ADDRESS (Street and number or rural route number, city or town, state, ZIP)			
2200 Sacramento Street, #1503, San Francisco, CA 94115			
28. NAME OF SURVIVING SPOUSE - FIRST		29. MIDDLE	
Carmencita		-	
30. LAST ( maiden name)		31. LAST	
Diaz		Petrakis	
32. NAME OF FATHER - FIRST		33. MIDDLE	
Mark		Manuel	
34. BIRTH STATE		35. BIRTH STATE	
Greece		Greece	
36. NAME OF MOTHER - FIRST		37. MIDDLE	
Stella		-	
38. LAST ( maiden)		39. LAST	
Christoulakis		Christoulakis	
40. BIRTH STATE		41. BIRTH STATE	
Greece		Greece	
42. DISPOSITION DATE		43. PLACE OF FINAL DISPOSITION	
05/08/2006		RES of Carmencita Petrakis, 2200 Sacramento Street, #1503, San Francisco, CA 94115	
44. TYPE OF DISPOSITION		45. SIGNATURE OF REGISTRAR	
CR/RES		<i>Robert Bowman</i>	
46. NAME OF FUNERAL ESTABLISHMENT		47. LICENSE NUMBER	
HALSTED N. GRAY - CAREW & ENGLISH		6947	
48. LICENSE NUMBER		49. SIGNATURE OF LOCAL REGISTRAR	
FD334		<i>Mitchell Katz</i>	
50. DATE		51. DATE	
05/03/2006		05/03/2006	
101. PLACE OF DEATH			
The Sequoia's			
102. COUNTY		103. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)	
San Francisco		1400 Geary Boulevard	
104. CITY		105. CITY	
San Francisco		San Francisco	
106. CAUSE OF DEATH			
From the chain of events - Disease, injury, or complication - that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or circulatory failure without showing the cause. DO NOT abbreviate.			
107. CAUSE OF DEATH			
Cardiopulmonary Arrest			
Congestive Heart Failure			
Ischemic Heart Disease			
108. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107			
Cerebrovascular Accident			
109. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 108? (If yes, list type of operation and date.)			
No			
110. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSE STATED			
111. SIGNATURE AND TITLE OF CERTIFIER			
<i>Jean K. Haddad</i>			
112. LICENSE NUMBER			
G7965			
113. DATE			
05/02/2006			
114. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSE STATED			
115. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE			
Jean K. Haddad, MD, 909 Hyde Street, San Francisco, CA 94109			
116. DATE			
03/17/2005			
117. DATE			
04/29/2006			
118. PLACE OF DEATH			
119. PLACE OF DEATH			
120. PLACE OF DEATH			
121. PLACE OF DEATH			
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200. PLACE OF DEATH			

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO  
This is to certify that the image reproduced hereupon is a true copy of the record on file in the SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH as of the date issued

DATE ISSUED

MAY 08 2006

\*002374944\*

*Mitchell Katz*  
Mitchell Katz, M.D.  
Health Officer and Local Registrar

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